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Attorneys for Defendant  
WALGREEN CO.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

ALFRED MORALES, individually and on  
behalf of all those similarly situated,

Plaintiff,

v.

WALGREEN CO., an Illinois corporation;  
and DOES 1-50, inclusive,

Defendants.

Case No.

(San Francisco County Superior Court  
Case No. CGC-18-570597)

**NOTICE OF REMOVAL OF CIVIL  
ACTION BY DEFENDANT WALGREEN  
CO.**

**[CLASS ACTION FAIRNESS ACT  
JURISDICTION]**

**[28 U.S.C. §§ 1332, 1441, 1446, AND 1453]**

*[Filed concurrently with Declarations of  
Amelia Legutki and Alicia Musgrove; Civil  
Cover Sheet; Certification of Interested  
Entities; and Corporate Disclosure Statement]*

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IRVINE, CA 92612-4414

1 **TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT**  
 2 **FOR THE NORTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF ALFRED**  
 3 **MORALES AND HIS ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE** that Defendant Walgreen Co. (“Defendant”) hereby removes  
 5 the above-entitled action from the Superior Court of the State of California for the County of San  
 6 Francisco to the United States District Court for the Northern District of California under the Class  
 7 Action Fairness Act (“CAFA”), pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453, on the  
 8 grounds that: (1) Plaintiff Alfred Morales (“Plaintiff”) is a “citizen of a State different from”  
 9 Defendant; (2) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of  
 10 interest and costs;” and (3) “the number of members of all proposed plaintiff classes in the  
 11 aggregate is” more than 100.

12 **PROCEDURAL BACKGROUND**

13 1. On October 16, 2018, Plaintiff commenced a class-action lawsuit against  
 14 Defendant in the Superior Court of the State of California for the County of San Francisco,  
 15 entitled “*Alfred Morales, individually and on behalf all others similarly situated, Plaintiff vs.*  
 16 *Walgreen Co, an Illinois corporation; and Does 1-50, inclusive, Defendant,*” Case No. CGC-18-  
 17 570597.

18 2. On December 7, 2018, Plaintiff sent the following documents to counsel for  
 19 Defendant, Allison C. Eckstrom, by email: (a) Summons; (b) Complaint; (c) Notice of Case  
 20 Management Conference; (d) Civil Case Cover Sheet; (e) ADR Program Information Packet; (f)  
 21 Stipulation to Alternative Dispute Resolution (ADR); and (g) Notice and Acknowledgment of  
 22 Receipt - Civil, true and correct copies of which are attached hereto as “**Exhibit A.**”

23 3. On December 13, 2018, Ms. Eckstrom signed the Notice of Acknowledgment of  
 24 Receipt – Civil, a true and correct copy of which is attached hereto as “**Exhibit B.**”

25 4. On January 4, 2019, Defendant filed its Answer to Plaintiff’s Complaint, a true and  
 26 correct copy of which is attached hereto as “**Exhibit C.**”

27 5. Exhibits A through C to this Notice of Removal constitute all pleadings, process  
 28 and orders served in this action at the time of removal.

6. Plaintiff's Complaint defines the putative class as "All individuals employed by Walgreens as a Store Manager, or the functional equivalent however titled, in California at any time during the period from four years prior to the filing of this action until the date of certification." (Complaint, ¶ 9.)

7. Plaintiff alleges the following causes of action against Defendant on behalf of himself and the proposed putative class: (1) Violations of California Business and Professions Code Section 17200 *et seq.* ("UCL"); (2) Failure to Pay Overtime; (3) Failure to Pay Premiums for Missed Rest Breaks; (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; and (5) Waiting Time Penalties.

### **REMOVAL IS TIMELY**

8. A case may be removed at any time, provided that neither of the two 30-day periods under 28 U.S.C. § 1446(b)(1) and (b)(3) has been triggered. *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1126 (9th Cir. 2013).

9. 28 U.S.C. § 1446(b)(1) provides that, "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based . . . ."

10. "[N]otice of removability under § 1446(b)(1) is determined through examination of the four corners of the applicable pleadings[.]" *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005). The Complaint does not "reveal on its face the facts necessary for federal court jurisdiction." *Rea v. Michaels Stores, Inc.*, 742 F.3d 1234, 1238 (9th Cir. 2014) (quoting *Harris*, 425 F.3d at 691–92). Specifically, it does not reveal on its face that the amount in controversy exceeds \$75,000 for traditional diversity purposes, nor that the amount in controversy exceeds \$5,000,000 for CAFA removal purposes.

11. Plaintiff also never served Defendant with an "other paper" sufficient to trigger the second 30-day clock. 28 U.S.C. § 1446(b)(3).

12. Therefore, because neither of the two 30-day periods under 28 U.S.C. § 1446(b)(1)

and (b)(3) has been triggered, removal is timely.

13. Nonetheless, Defendant also removed this action within 30 days of being served, so removal is timely. “[D]efendant’s time to remove is triggered by simultaneous service of the summons and complaint ... but not by mere receipt of the complaint unattended by any formal service.” *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999). Defendant was not formally served until it executed the acknowledgement of receipt on December 13, 2018, and had until January 14, 2019 to remove. *Harper v. Little Caesar Enterprises, Inc.*, No. SACV 18-01564-JLS-JDE, 2018 WL 5984841, at \*2 (C.D. Cal. Nov. 14, 2018) (holding that the date of execution of the notice and acknowledgment of receipt triggers the 30-day removal period); *Langston v. 20/20 Companies, Inc.*, No. EDCV 14–1360 JGB (SPx), 2014 WL 5335734, at \*3 (C.D. Cal. Oct. 17, 2014) (same); *Snow v. AT&T Corp.*, No. C 05–00599 JF, 2005 WL 1798399, at \*2 (N.D. Cal. July 27, 2005) (same).

## JURISDICTION

### PLAINTIFF’S COMPLAINT IS SUBJECT TO REMOVAL UNDER CAFA

14. The Court has original jurisdiction over this action pursuant to CAFA. As such, this action may be removed to this Court by Defendant pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453.

15. Under CAFA, the federal district court has jurisdiction if:

- a) There are at least 100 class members in all proposed plaintiff classes; and
- b) The combined claims of all class members exceed \$5 million exclusive of interest and costs; and
- c) Any class member (named or not) is a citizen of a different state than any defendant. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B) and 1453(a).

#### A. The Diversity Of Citizenship Requirement Is Satisfied

16. **Plaintiff is A Citizen of California.** A person is a “citizen” of the state in which he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A person’s domicile is the place he resides with the intention to remain or to which he intends to

return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Plaintiff alleges that, “[d]uring the Class Period, he was employed by Walgreens as a Store Manager in the State of California and in this judicial district.” (Complaint, ¶ 4.) Defendant’s records reflect that Plaintiff has been employed by Walgreens in the State of California since May 15, 1997 and has held the position of Store Manager since October 1, 2004. (Declaration of Alicia Musgrove (“Musgrove Decl.”), ¶ 2.) Plaintiff has worked for Defendant at locations in San Francisco, California during his entire employment. (Musgrove Decl., ¶ 3.) According to Defendant’s records, Plaintiff currently resides, and at the time this action was commenced, resided, in South San Francisco, California. (Musgrove Decl., ¶ 4.) Therefore, Plaintiff resided in California at the time the action was commenced and intended to remain there. As such, Plaintiff is and, at all times since the commencement of this action has been, a resident and citizen of California.

17. **Defendant is a Citizen of Illinois.** At the time of the filing of this action, Defendant was, and still is, a corporation incorporated under the laws of the State of Illinois with its principal place of business in Illinois. (Declaration of Amelia Legutki (“Legutki Decl.”), ¶ 2.)

18. Pursuant to 28 U.S.C. § 1332(c), a corporation shall be deemed to be a citizen of any state by which it has been incorporated and of the state where it has its principal place of business. The Supreme Court has established the proper test for determining a corporation’s principal place of business for purposes of diversity jurisdiction. *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). The Court held that the “‘principal place of business’ [as set forth in section 1332(c)] is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities.” *Id.* at 92-93. The Court further clarified that the principal place of business was the place where the corporation “maintains its headquarters – provided that the headquarters is the actual center of direction, control and coordination.” *Id.* at 93; *see also Montrose Chemical v. American Motorists Ins. Co.*, 117 F.3d 1128, 1134 (9th Cir. 1997) (holding that a corporation’s principal place of business is the state in which it performs a substantial predominance of its corporate operations and, when no state contains a substantial predominance of the corporation’s business activities, then the corporation’s principal place of business is the state in which the corporation performs its executive and administrative functions).

19. Defendant's corporate headquarters are located in Deerfield, Illinois where its officers direct, control and coordinate Defendant's activities. (Legutki Decl., ¶ 3.) Defendant's operations are managed from this location, including, but not limited to, those operations relating to administering company-wide policies and procedures, legal affairs, and general business operations. (*Id.*) Thus, Defendant is a citizen of the State of Illinois.

20. **The Citizenship of "Doe Defendants" Must Be Disregarded.** The citizenship of fictitiously-named "Doe" defendants is to be disregarded for the purposes of removal. 28 U.S.C. § 1441(a).

21. The minimal diversity requirement of 28 U.S.C. § 1332(d) is met in this action because the citizenship of at least one putative class member is diverse from the citizenship of at least one defendant. 28 U.S.C. § 1332(d)(2)(A). Plaintiff, a putative class member, is a citizen of California. (Musgrove Decl., ¶¶ 2-4; Complaint, ¶ 4.) Defendant is a citizen of Illinois. (Legutki Decl., ¶ 2.) The citizenship of "Doe" defendants is disregarded for purposes of removal. 28 U.S.C. § 1441(b)(1). Therefore, the requisite minimal diversity exists between the parties.

B. There Are At Least 100 Class Members in the Proposed Class

22. Plaintiff purports to bring this action on behalf of "All individuals employed by Walgreens as a Store Manager, or the functional equivalent however titled, in California at any time during the period from four years prior to the filing of this action until the date of certification." (Complaint, ¶ 9.)

23. Defendant denies Plaintiff's claims and makes no admission by way of this removal.

24. Based on the putative class, as defined in the Complaint, more than 785 individuals fall within the putative class. (Musgrove Decl., ¶ 5.)

C. The Requisite \$5 Million Amount In Controversy Is Satisfied<sup>1</sup>

25. Based on the allegations in the Complaint, and the *very conservative* assumptions

<sup>1</sup> In alleging the amount in controversy for purposes of CAFA removal, Defendant does not concede in any way that the allegations in the Complaint are accurate, or that Plaintiff is entitled to any of the monetary relief requested in the Complaint. Nor does Defendant concede that any or all of the putative class members are entitled to any recovery in this case, or are appropriately included in the putative class.

below, the alleged amount in controversy easily exceeds, in the aggregate, \$5 million.

**a. Unpaid Overtime Wages**

26. Labor Code § 1194, subdivision (a) provides: “Notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation . . . .”

27. Plaintiff alleges that Walgreens misclassified him and members of the putative class as exempt from the California overtime laws. (*See generally* Complaint.) Plaintiff contends that he and the putative class spent the majority of their workdays engaging in non-exempt, non-managerial tasks and that, therefore, they were entitled to receive overtime compensation for all hours worked in excess of eight (8) in a day and/or forty (40) hours in a workweek. (*Id.*)

28. Plaintiff further alleges that he and the Store Managers who he purports to represent “customarily and regularly work at least eight hours on each workday” and that “Store Managers are required to work overtime hours every month” without overtime premium pay. (Complaint, ¶¶ 19, 20.) Plaintiff’s PAGA letter alleges that Plaintiff and the putative class members “routinely work more than 40 hours per week or 8 hours per day without receiving a premium for overtime work.” (Ex. A, page 1.)

29. Plaintiff alleges that the failure to pay overtime wages constitutes unfair competition within the meaning of Business and Professions Code Section 17200. (Complaint, ¶ 25.) The statute of limitations for such a claim is four (4) years. Cal. Bus. & Prof. Code § 17208. Accordingly, the measure of potential damages for the overtime claim is based on a four-year limitations period.

30. Defendant denies that it misclassified Plaintiff or any member of the putative class as exempt from the overtime laws and further denies that any overtime wages are due and owing to Plaintiff and the putative class members. However, because Plaintiff has alleged that he and the putative class members “customarily and regularly work at least eight hours on each workday . . . [and] are required to work overtime hours every month,” the court should apply to the amount in controversy requirement a conservative assumption of one hour of unpaid overtime wages for each



putative class member during each workweek. *See, e.g., Soto v. Greif Packaging, LLC*, 2018 WL 1224425, \*3 (C.D. Cal. Mar. 8, 2018) (finding it reasonable to assume one hour of unpaid wages per employee per workweek where plaintiff alleged that defendant failed to pay him and the class members for all hours worked on a “consistent and regular basis”); *Reyes v. Carehouse Healthcare Center, LLC*, 2017 WL 2869499, \*4 (C.D. Cal. July 5, 2017) (defendant’s estimate of one hour of unpaid overtime wages per workweek was reasonable where plaintiff alleged that defendants engaged in a “regular practice of willfully, unfairly and unlawfully” depriving plaintiff and the class members of compensation).

31. Here, assuming one (1) hour of unpaid overtime wages per week for each putative class member, the total amount of unpaid wages would exceed **\$6,521,350** (*i.e.*, \$50 [1.5 times the average hourly wage rate applicable during class period] x 130,427 [number of weeks worked by putative class members during the class period]). (Musgrove Decl., ¶¶ 6-7.)

#### **b. Unpaid Rest Period Premiums**

32. Plaintiff also alleges that Defendant “willfully, intentionally, and knowingly did not provide Plaintiff and other Store Manager the required number of breaks, including, without limitation, a 10-minute rest break for each and every four hours worked” (Complaint, ¶¶ 21, 28, and 36.) He claims that, “because Walgreens misclassified Mr. Morales and other Store Managers in California as exempt, Walgreens does not provide them with the required number of rest breaks, including, without limitation, a 10-minute rest break for each and every 4 hours worked...” (Ex. A, pages 1-2.) In other words, Plaintiff claims that he and the putative class members were never authorized and permitted to take rest breaks because, as exempt employees, Defendant did not believe that they were entitled to such rest breaks.

33. Under California law, employees who are denied the opportunity to take proper rest periods are entitled to one hour of premium pay for each day that a rest period is not authorized or permitted. *See Marlo v. United Parcel Service, Inc.*, 2009 WL 1258491, \*7 (C.D. Cal. 2009). As a matter of law, rest period claims are properly considered in determining the amount in controversy. *See, e.g., Muniz v. Pilot Travel Ctr. LLC*, 2007 WL 1302504, \*4 (E.D. Cal. 2007); *Helm v. Alderwoods Group, Inc.*, 2008 WL 2002511, \*8 (N.D. Cal. 2008).



34. Plaintiff also alleges that the failure to provide rest periods constitutes unfair competition within the meaning of Business and Professions Code Section 17200. (Complaint, ¶ 28.) The statute of limitations for such a claim is four (4) years. Cal. Bus. & Prof. Code § 17208. Accordingly, the measure of alleged potential damages for the rest break claim is based on a four-year limitations period.

35. Where, as here, a plaintiff alleges that, due to the misclassification of employees as exempt, the defendant did not provide the plaintiff with the required number of rest breaks, it is reasonable to assign a 100 % violation rate for purposes of calculating the amount in controversy.

36. However, although Defendant would be well within its right to apply a 100% violation rate, for removal purposes, Defendant assumes a violation rate of one violation per putative class member per workweek. This is more than reasonable, as numerous courts have held that an estimate of one violation per workweek is proper when a plaintiff alleges that the violation occurs regularly, consistently, or systematically. *See Campbell v. Vitran Exp., Inc.*, 471 Fed. Appx. 646, 649 (9th Cir. 2012) (finding an assumption that “each claimant missed at least one rest break and one meal break per week” was adequately supported by the complaint where the complaint alleged that defendant “regularly and consistently failed to provide uninterrupted meal and rest periods”); *Byrd v. Masonite Corp.*, 2016 WL 2593912, \*5 (C.D. Cal. May 5, 2016) (allegations of a systematic practice supports the “assumption that each class member missed one meal period and one rest period per week”); *Garza v. Brinderson Constructors, Inc.*, 178 F.Supp.3d 906, 911 (N.D. Cal. 2016) (assumption of one meal and one rest violation per week reasonable where the complaint alleged that plaintiff “regularly” missed meal breaks); *Arreola v. Finish Line*, 2014 WL 6982571, at \*4 (N.D. Cal. Dec. 9, 2014) (finding that pleading “regular or consistent practice” supports assumption that every class member “experienced at least one violation once per week”). Plaintiff’s allegation that Defendant failed to provide him with rest breaks *because* it misclassified him as exempt from California’s rest break requirements justifies an assumed violation rate at least as high as when a plaintiff claims that violations occurred regularly, consistently, or systematically.

37. Defendant denies that it misclassified Plaintiff and members of the putative class as

1 exempt from the California wage and hour laws, including the rest break requirements. However,  
 2 assuming Plaintiff and the putative class members were entitled to rest breaks (due to the alleged  
 3 misclassification as exempt under California law) and denied the opportunity to take one  
 4 compliant rest break each workweek during the class period, the total amount of missed rest break  
 5 premiums would exceed **\$4,347,131** (*i.e.*, \$33.33 [average hourly wage rate applicable during  
 6 class period] x 130,427 [number of weeks worked by putative class members during the class  
 7 period]). (Musgrove Decl., ¶ 6-7.)

8 **c. Waiting Time Penalties**

9 38. Plaintiff alleges that, “Throughout the Class Period, Defendant did not pay Morales  
 10 and the subclass members the premium for missed rest breaks and overtime.” (Complaint, ¶ 46.)  
 11 He seeks penalties pursuant to Labor Code § 203 for all putative class members who were  
 12 terminated or resigned equal to their daily wage times thirty (30) days. (Complaint, ¶¶ 10, 47.)  
 13 The statute of limitations for penalties under California Labor Code § 203 is three (3) years. *See*  
 14 Cal. Civ. Proc. Code § 338(a).

15 39. The number of putative class members who stopped working for Defendant  
 16 between October 16, 2015 and December 1, 2018 is at least 193. (Musgrove Decl., ¶ 9.)  
 17 Accordingly, based on the allegations of the Complaint, any putative class member who stopped  
 18 working for Defendant during the relevant time period is entitled to 30 days’ continuation of  
 19 wages as a penalty under California Labor Code section 203. *See Quintana v. Claire’s Stores,*  
 20 *Inc.*, 2013 WL 1736671, \*4-6 (N.D. Cal. 2013) (“As to the waiting time claims, the court finds  
 21 that Defendants’ calculations” of thirty-days of waiting time penalties for each putative class  
 22 member terminated during the statute of limitations “are supported by Plaintiffs’ allegations and  
 23 are a reasonable estimate of the potential value of the claims.”).

24 40. Thus, according to Plaintiff’s allegations, Plaintiff contends that former putative  
 25 class members are entitled to recover at least **\$1,543,845** (*i.e.* \$33.33 [hourly rate during class  
 26 period] x 8 [8-hour work day] x 30 days [waiting time penalty] x 193 [number of putative class  
 27 members who stopped working for Defendant between October 16, 2015 and December 1, 2018]).  
 28 (Musgrove Decl., ¶ 6, 8.)

d. Attorneys' Fees

41. Plaintiff seeks attorneys' fees on behalf of the putative class. (Complaint, Prayer for Relief at ¶ 12.) Attorneys' fees are properly included in the amount in controversy. *See, Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (statutorily-mandated attorneys' fees are properly included in the amount in controversy for CAFA jurisdiction purposes).

42. When, as here, a plaintiff seeks to recover attorneys' fees as permitted by California law, the court must consider future attorneys' fees when determining the amount in controversy. *Fritsch v. Swift Transportation Company of Arizona, LLC*, No. 18-55746, 2018 WL 3748667 (9th Cir. Aug. 8, 2018). In class action litigation, courts routinely grant attorneys' fees awards that range from 25% to 33% of the settlement or verdict amount. *See, e.g., Hanlon v. Center for Auto Safety*, 150 F.3d 1011, 1029 (9th Cir. 1998) ("This circuit has established 25% of the common fund as a benchmark award for attorney fees"); *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (awarding 30% attorneys' fee award and compiling cases where range of attorneys' fee award ranged between 25% and more than 40%). Accordingly, including attorneys' fees of 25% is reasonable when calculating the amount in controversy. *See, e.g., Giannini v. Northwestern Mut. Life Ins. Co.*, 2012 WL 1535196, at \*4 (N.D. Cal. 2012) (holding that defendant's inclusion of attorneys' fees to satisfy amount in controversy was reasonable where defendant's "base this amount by multiplying by twenty-five percent the sum of the amounts placed in controversy by the four claims" asserted by plaintiff.); *Jasso v. Money Mart Express, Inc.*, 2012 WL 699465, at \*6-7 (N.D. Cal. 2012) (holding that "it was not unreasonable for [Defendant] to rely on" an "assumption about the attorneys' fees recovery as a percentage of the total amount in controversy" and noting that "it is well established that the Ninth Circuit 'has established 25% of the common fund as a benchmark award for attorney fees.'")

43. Assuming Plaintiff prevailed on a class-wide basis in this case, the estimated attorneys' fees, based on the foregoing conservative calculations, would be **\$3,103,081** (*i.e.*, \$12,412,326 [amount in controversy for failure to pay overtime, failure to provide rest breaks, and

waiting time penalties] x 25%).

**e. Summary of Amount in Controversy**

In light of the foregoing, Plaintiff's allegations establish an amount in controversy well in excess of the jurisdictional minimum of \$5 million for purposes of removal under CAFA. The minimum amount in controversy, using the most conservative possible estimates,<sup>2</sup> is summarized as follows:

<u>Claim</u>	<u>Amount</u>
Failure to pay overtime	\$6,521,350
Failure to provide rest breaks	\$4,347,131
Waiting time penalties	\$1,543,845
Attorneys' Fees	\$3,103,081
<b>Total:</b>	<b>\$15,515,407</b>

44. Accordingly, removal of this action under CAFA is proper under 28 U.S.C. §1332(d).

**THE PROCEDURAL REQUIREMENTS OF 28 U.S.C. § 1446 ARE SATISFIED**

45. In accordance with 28 U.S.C. §1446(a), this Notice of Removal is filed in the District in which the action is pending. The San Francisco County Superior Court is located within the Northern District of California. Therefore, venue is proper in this court because it is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

46. In accordance with 28 U.S.C. §1446(a), copies of all process, pleadings, and orders served upon Defendant are attached as Exhibits to this Notice.

47. In accordance with 28 U.S.C. §1446(d), a copy of this Notice is being served upon counsel for Plaintiff, and a notice will be filed with the Clerk of the Superior Court of California

<sup>2</sup> Notably, the aforementioned amounts in controversy exclude the potential liability for Plaintiff's claim for failure to provide accurate itemized wage statements.

1 for the County of San Francisco. Notice of Compliance shall be filed promptly afterwards with  
2 this court.

3 48. As required by Federal Rule of Civil Procedure 7.1, Defendant concurrently filed  
4 its Certificate of Interested Parties.

5 **CONCLUSION**

6 For the foregoing reasons, Defendant hereby removes the above-entitled action to United  
7 States District Court for the Northern District of California.

8  
9 Dated: January 7, 2019

Allison C. Eckstrom  
Christopher J. Archibald  
Michael E. Olsen  
**BRYAN CAVE LEIGHTON PAISNER LLP**

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13 By: /s/ Christopher J. Archibald  
14 Christopher J. Archibald  
15 Attorneys for Defendant  
16 WALGREEN CO.  
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# EXHIBIT A

SUM-100

# SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

WALGREEN CO., an Illinois Corporation, and DOES 1-50, inclusive

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ALFRED MORALES, individually and on behalf of all others similarly situated

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): San Francisco Superior Court  
Civic Center Courthouse, 400 McAllister St., San Francisco, CA 94102

CASE NUMBER:  
(Número del Caso):

CGC-18-570597

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Ray E. Gallo, Gallo LLP, 1604 Solano Ave., Suite B, Berkeley, CA 94707; 415-257-8800

DATE: OCT 16 2018  
(Fecha)CLERK OF THE COURT Clerk, by  
(Secretario)Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

DE LA VEGA-NAVARRO, Rossaly

### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Walgreen Co.  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

(SEAL)

COPY FAXED



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12 Attorneys for Plaintiff Alfred Morales

13  
 14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 15 **COUNTY OF SAN FRANCISCO**

16 ALFRED MORALES, individually and on  
 17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 WALGREEN CO., an Illinois Corporation,  
 and DOES 1-50, inclusive,

21 Defendants.

Case No.

**CGC-18-570597**

**CLASS ACTION**

**COMPLAINT FOR:**

1. Violations of California Bus. & Prof. Code § 17200
2. Failure to Pay Overtime (Lab. Code § 510)
3. Failure to Pay Premium for Missed Rest Breaks (Lab. Code § 226.7 & 8 CCR § 11070 ¶12(B))
4. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code § 226)
5. Waiting Time Penalties (Lab. Code § 201-203)

**DEMAND FOR JURY TRIAL**

**ENDORSED  
FILED**  
*San Francisco County Superior Court*  
**OCT 16 2018**  
**CLERK OF THE COURT**  
 BY **ROSSALY DE LA VEGA**  
*Deputy Clerk*

**COPY**

**FAXED**

## **INTRODUCTION**

1           Walgreen Co. ("Walgreens") called Alfred Morales ("Morales" or "Plaintiff") the  
2 "Store Manager" at one of its drug stores. But, like others with that title in California Walgreens  
3 stores, Mr. Morales spent more of his time performing the hourly tasks of a cashier, pharmacy  
4 technician, etc., than he did managing the store, he did not regularly exercise independent  
5 judgment and discretion on matters of significance, and he worked overtime. California law  
6 entitles all such employees to overtime wages and to paid rest breaks. But Walgreens has failed to  
7 pay Morales and the class members their earned overtime wages, and has failed to provide legally  
8 required breaks. Walgreens owes Morales and the class unpaid wages, penalties, interest, and  
9 attorneys' fees.

10           Morales brings this lawsuit pursuant to California Code of Civil Procedure § 382  
11 for himself and all others employed by Walgreens as a Store Manager, or the functional  
12 equivalent however titled, in California, at any time during the period from four years prior to the  
13 filing of this action until the date of certification (the "Class Period").

14           The allegations herein concerning Morales individually are true to the best of  
15 Plaintiff's current knowledge and belief. Morales is informed and believes the remainder are true  
16 based on the investigation of counsel.

## **PARTIES**

17  
18           Plaintiff is a natural person working and living in California. During the Class  
19 Period, Plaintiff was employed by Walgreens as a Store Manager in the State of California and in  
20 this judicial district.

21           Walgreen Co. is an Illinois corporation with its principal place of business located  
22 at 200 Wilmot Road, Deerfield, IL 60015.

23           The true names and capacities of persons or entities, whether individual, corporate,  
24 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to  
25 Plaintiff, who therefore sues these Defendants by these fictitious names under Code of Civil  
26 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the  
27 Defendants designated herein as a DOE defendant is legally responsible in some manner for the  
28

1 unlawful acts referred to herein. DOES 1-50 include, but are not limited to, Walgreens co-  
2 employers, predecessors, successors, parent and affiliate corporations, and officers, directors, and  
3 managers. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
4 capacities of the Defendants designated hereinafter as DOES when ascertained.

#### 5 VENUE AND JURISDICTION

6 7. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395  
7 and 395.5 because Walgreens employed Morales in this judicial district, Morales's injuries  
8 occurred in this judicial district, and a substantial part of the events and omissions giving rise to  
9 Morales's claims occurred in this judicial district.

10 8. This Court has general subject matter jurisdiction.

#### 11 CLASS ALLEGATIONS

12 9. Morales seeks to represent a class defined as:

13 All individuals employed by Walgreens as a Store Manager, or the  
14 functional equivalent however titled, in California at any time  
15 during the period from four years prior to the filing of this action  
16 until the date of certification.

17 10. Morales seeks to represent a subclass defined as:

18 All class members whose employment by Walgreens was or is  
19 terminated during the period from four years prior to the filing of  
20 this action until the date of certification.

21 11. Numerosity. The proposed class and subclass are so numerous that joinder is  
22 impractical.

23 12. Typicality and Adequacy. There are questions of law and fact common to all  
24 members of the proposed class and subclass. Mr. Morales is similarly situated to the other  
25 members of the proposed class and subclass and is an adequate representative of the proposed  
26 class and subclass. Mr. Morales's claims are typical of the claims of class and subclass members.  
27 He suffered injuries like those suffered by the other class and subclass members from  
28 Defendant's common wage payment policies and practices. He will fairly and adequately protect  
the interests of the members of the class and subclass. He has no interest that is adverse to the  
interests of the other class and subclass members. He has retained attorneys who are competent

and experienced in the prosecution of wage and hour class action litigation.

13. Ascertainability. The proposed class and subclass are ascertainable. Their members can be identified and located using Defendant's records.

14. Commonality. Common questions of law and fact predominate over questions that affect only individual members of the proposed class and subclass. Common questions include, without limitation:

- a. Whether the class members qualify for exempt status;
- b. Whether Walgreens is a "retail or service establishment";
- c. What Walgreens expectations are as to the duties and responsibilities of Store Managers, and whether these expectations are reasonable under the circumstances;
- d. Whether Walgreens's illegal acts were wilfull;
- e. Whether and to what extent the Store Managers have been damaged; and,
- f. Whether and to what extent the Store Managers are entitled to penalties, interest and attorneys' fees.

15. Superiority. A class or collective action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of all members of the proposed classes is impractical. Class or collective treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Furthermore, as the damages suffered by each individual member of the proposed classes may be relatively small, the expense and burden of individual litigation could make it impractical, difficult, and/or impossible for individual members of the class to redress the wrongs done to them while an important public interest will be served by addressing the manner as a class action. The unnecessary cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

16. Walgreens is the second-largest pharmacy store chain in the United States.

1 17. The Store Managers were and are primarily engaged in unspecialized tasks, rather  
2 than executive, administrative, or professional tasks while employed by Walgreens.

3 18. The Store Managers customarily and regularly perform a minority of their work  
4 engaged in managerial activities. The Store Managers are and at all relevant times have been  
5 required by Walgreens to follow a specific set of internal compliance guidelines and therefore are  
6 closely supervised by Defendant. Mr. Morales and other Store Managers do not and have not  
7 regularly exercised independent judgment and discretion on matters of significance.

8 19. Store Managers customarily and regularly work at least eight hours on each  
9 workday. Store Managers are required to work overtime hours every month.

10 20. Walgreens paid the Store Managers on a salary basis with no premium for  
11 overtime work, despite requiring a majority of their job duties be unspecialized and manual.

12 21. Walgreens willfully, intentionally, and knowingly did not provide Plaintiff and  
13 other Store Managers the required number breaks including, without limitation, a 10-minute rest  
14 break for each and every 4 hours worked.

15 22. Walgreens willfully, intentionally, and knowingly did not provide Plaintiff and  
16 other Store Managers with itemized wage statements as required.

17 23. Walgreens willfully, intentionally, and knowingly failed to pay Plaintiff and other  
18 Store Managers their earned wages when due.

19 **FIRST CAUSE OF ACTION**

20 **Violations of Bus. & Prof. Code § 17200 et seq.**

21 **(Against All Defendants, by Morales and the Class)**

22 24. Morales incorporates all preceding and subsequent paragraphs as though repeated  
23 here.

24 25. California Labor Code § 510 requires Walgreens to pay all of its non-exempt  
25 employees overtime equal to 1.5 times the employee's regular rate of pay for all hours worked  
26 beyond 40 per week. Morales and the proposed class are not exempt under the California Labor  
27 Code. Among other things, they did not and do not perform work directly related to the  
28 management or general business operations of Walgreens, they are/were primarily engaged in  
manual labor, unspecialized, and/or sales related activities, and they did not and do not spend a

majority of their time on exempt tasks.

26. Walgreens has committed an act of unfair competition by not paying the required overtime pay to Morales and the Store Managers.

27. Pursuant to California Business & Professions Code § 17203, Morales requests an order requiring Walgreens to make restitution of all overtime wages due to him and the members of the class in an amount to be proved at hearing.

28. Labor Code § 226.7(c) and 8 CCR § 11070 ¶12(B) require that an employee receive rest periods, which shall be based on the total daily hours worked at the rate of 10 minutes net rest time per 4 hours or major fraction thereof. Morales and the proposed class are not exempt under the California Labor Code, because, among other things, they did not and do not perform work directly related to the management or general business operations of Walgreens, they are/were primarily engaged in manual labor, unspecialized and/or sales related activities, and they did not and do not spend a majority of their time on exempt tasks.

29. Walgreens has committed an act of unfair competition by not providing the required rest periods. Because Walgreens failed to provide Morales and the class with rest breaks, Walgreens is obliged by Labor Code § 226.7(c) and 8 CCR § 11070 ¶12(B) to pay one additional hour's wage for each rest break not provided for every 4 hours worked.

30. Pursuant to California Business & Professions Code § 17203, Morales requests an order requiring Walgreens to make restitution of all overtime wages due.

## **SECOND CAUSE OF ACTION**

### **Failure to Pay Overtime (Lab. Code § 510)**

#### **(Against All Defendants, by Morales and the Class)**

31. Morales incorporates all preceding and subsequent paragraphs as though repeated here.

32. California Labor Code § 510 and Wage Order 4-2001, 8 C.C.R. § 11070, require that an employee be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day. Morales and the members of the class are not exempt because, among other things, they did not and do not perform work directly related to the management or general business operations of Walgreens, they are/were primarily engaged in

1 manual labor, unspecialized and/or sales related activities, and they did not and do not spend a  
 2 majority of their time on exempt tasks. Walgreens has violated California labor law by not paying  
 3 the required overtime pay to Morales and the members of the class.

4 33. Pursuant to Labor Code § 218.6, Plaintiff requests prejudgment interest on all  
 5 wages from the date the wages were due and payable.

6 34. Pursuant to California Labor Code §§ 218.5 and 1194, Morales requests an order  
 7 requiring Walgreens to pay damages of all overtime wages due to them and the members of the  
 8 class in an amount to be proved at hearing as well as attorneys' fees and costs.

### 9 **THIRD CAUSE OF ACTION**

#### 10 **Failure to Pay Premium for Missed Rest Breaks**

11 **(Lab. Code 226.7 & 8 CCR § 11070 ¶12(B))**

12 **(Against All Defendants, by Morales and the Class)**

13 35. Morales incorporates all preceding and subsequent paragraphs as though repeated  
 14 here.

15 36. 8 C.C.R. § 11070 (12) requires that an employer authorize all employees to take  
 16 one 10 minute rest period for every 4 hours worked, or portion thereof (excluding shifts of 3.5  
 17 hours or less). Morales and the members of the class are not exempt because, among other things,  
 18 they did not and do not perform work directly related to the management or general business  
 19 operations of Walgreens, they are/were primarily engaged in manual labor, unspecialized and/or  
 20 sales related activities, and they did not and do not spend a majority of their time on exempt tasks.  
 21 Walgreens has violated California labor law by not providing Morales and the class with at least  
 22 one 10 minute rest periods per each 4 hours of work.

23 37. Pursuant to Cal. Code Reg. tit. 8, § 11070(12), Plaintiff requests 1 hour of pay at  
 24 his regular rate of compensation for each workday that the rest period was not provided.

### 25 **FOURTH CAUSE OF ACTION**

#### 26 **Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement** **Provisions (Lab. Code § 226)**

27 **(Against All Defendants, by Morales and the Class)**

28 38. Morales incorporates all preceding and subsequent paragraphs as though repeated  
 here.



39. Labor Code § 226(a) requires an employer at the time of each payment of wages to furnish its employees with an accurate itemized statement in writing showing, among other things: (1) gross wage earned, (2) total hours worked, (3) all deductions, (4) net wages earned, and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate.

40. Because Walgreens did not pay Morales and the class members the premium for missed rest breaks and overtime, Walgreens systematically failed to provide wage statements with accurate information and engaged in a policy of under-reporting hours actually worked.

41. Moreover, in violation of Labor Code § 226(b), Walgreens did not maintain employer records of the information required in Labor Code § 226(a), including the hours actually worked by Morales and the class members.

42. Walgreens knowingly and intentionally failed to provide Morales and the class members with statements itemizing the total hours worked during each pay period in violation of Labor Code § 226(e). Morales is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

### **FIFTH CAUSE OF ACTION**

#### **Waiting Time Penalties (Lab. Code § 201-203)**

#### **(Against All Defendants, by Morales and the Subclass)**

43. Morales incorporates all preceding and subsequent paragraphs as though repeated here.

44. Labor Code §§ 201-203 require an employer to timely pay all earned wages, and impose a penalty of one day's wages for each day of delay, to a maximum of 30 day's pay.

45. As earned wages, the rest break and overtime wages were due immediately upon discharge.

46. Throughout the Class Period, Defendant did not pay Morales and the subclass members the premium for missed rest breaks and overtime. Accordingly, Defendant systematically and willfully failed to pay wages earned.

47. Defendant willfully failed to pay wages earned for 30 days after they were due.

1 This failure requires Defendant to pay penalties equal to one day's wages for each day that  
 2 payment is delayed, up to 30 days, pursuant to Labor Code §203.

3 48. Morales and the subclass seek and are entitled to penalties accordingly.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 6 1. For an order certifying the proposed class, and sub-class, and designating this
- 7 action as a class action pursuant to C.C.P. § 382;
- 8 2. For an order appointing Plaintiff and his counsel to represent the proposed class
- 9 and subclass as defined herein;
- 10 3. For compensatory damages according to proof;
- 11 4. For an order requiring Defendant to make restitution of all wages that were
- 12 illegally withheld;
- 13 5. For waiting time penalties;
- 14 6. For prejudgment interest, in an amount according to proof, including but not
- 15 limited to as authorized by Labor Code §§ 218.6 and 1194(a) and Civil Code
- 16 §§3287(b) and 3289;
- 17 7. For an order requiring Defendant to pay all wages incurred as a result of
- 18 Defendant's failure to provide Plaintiff and the class with required rest periods;
- 19 8. For damages sustained and/or penalties for not receiving accurate wage statements
- 20 pursuant to Labor Code §226 in an amount according to proof;
- 21 9. For penalties equal to one day's wages for each day that payment was delayed, up
- 22 to 30 days, pursuant to Labor Code §203 (for the subclass);
- 23 10. For preliminary and permanent injunctive relief, including but not limited to an
- 24 order that Walgreens account for, disgorge, and restore to Plaintiff and other
- 25 current and former Store Managers the unlawfully unpaid premium for non-
- 26 compliant rest breaks, and for a court order enjoining Walgreens from continuing
- 27 to fail to pay its employees in accordance with California law and from continuing
- 28 to engage in the aforesaid unlawful and unfair practices;

11. For other penalties and liquidated damages as alleged herein;
12. For reasonable attorneys' fees and costs; and,
13. For such other and further relief as the Court deems just and proper.

DATED: October 15, 2018

**RESPECTFULLY SUBMITTED,**

**GALLO LLP  
THE WYNNE LAW FIRM**

By: 

Ray E. Gallo

Attorneys for Plaintiff Alfred Morales,  
individually and on behalf of all others  
similarly situated

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial of all issues, matters, and claims so triable.

DATED: October 15, 2018

**GALLO LLP  
THE WYNNE LAW FIRM**

By: 

Ray E. Gallo

Attorneys for Plaintiff Alfred Morales,  
individually and on behalf of all others  
similarly situated

CASE NUMBER: CGC-18-570597 ALFRED MORALES VS. WALGREEN CO AN ILLINOIS COR

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

**DATE: MAR-20-2019**

**TIME: 10:30AM**

**PLACE: Department 610  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org) under Online Services.**

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.  
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to Judge pro tem.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY Name, title, address, and telephone: <b>Ray E. Gallo (SBN 158903); Dominic Valentin (240001)</b> <b>Gallo LLP</b> <b>1604 Solano Ave., Suite B, Berkeley, CA 94707</b>  TELEPHONE: <b>415-257-8800</b> FAX NO: ATTORNEY FOR: <b>Alfred Morales</b>		FOR COURTROOM ONLY  <b>ENDORSED FILED</b> San Francisco County Superior Court  <b>OCT 18 2018</b> CLERK OF THE COURT BY: <b>ROSSALY DE LA VEGA</b> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN FRANCISCO</b> STREET ADDRESS: <b>400 McAllister St.</b> MAILING ADDRESS: <b>400 McAllister St.</b> CITY AND ZIP CODE: <b>San Francisco, CA 94102</b> BRANCH NAME: <b>Civil Center Courthouse</b>		
CASE NAME: <b>Morales v. Walgreen Co.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER:  JUDGE: <b>GGC-18-570597</b>

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (40) <b>Other PIP/UMD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Automobile (24) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (44) <input type="checkbox"/> Other PIP/UMD (23) <b>Non-PIP/UMD (Other) Tort</b> <input type="checkbox"/> Business tort/fair business practice (37) <input type="checkbox"/> Civil rights (36) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PIP/UMD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (39) <input type="checkbox"/> Rule 3.740 collections (39) <input type="checkbox"/> Other collections (39) <input type="checkbox"/> Insurance coverage (10) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (30) <input type="checkbox"/> Other real property (20) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (36) <input type="checkbox"/> Pollution or arbitration award (11) <input type="checkbox"/> Will of decedent (32) <input type="checkbox"/> Other judicial review (33)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.403-3.405) <input type="checkbox"/> Antitrust/Trade regulation (33) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (38) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (29) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	---	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): (3)

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related cases. (You may use form CM-010.)

Date: October 15, 2018  
 Ray E. Gallo

(TYPE OR PRINT NAME)

## NOTICE

SIGNATURE OF PARTY OR ATTORNEY (FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

COPY  
 FAXED

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

<b>Auto Tort</b> Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i> <b>Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other P/DPD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other P/DPD/WD <b>Non-P/DPD/WD (Other) Tort</b> Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-P/DPD/WD Tort (35) <b>Employment</b> Wrongful Termination (36) Other Employment (15)	<b>Contract</b> Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute <b>Real Property</b> Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i> <b>Unlawful Detainer</b> Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i> <b>Judicial Review</b> Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</b> Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41) <b>Enforcement of Judgment</b> Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case <b>Miscellaneous Civil Complaint</b> RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i> <b>Miscellaneous Civil Petition</b> Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
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## Superior Court of California, County of San Francisco

### Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

#### WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

#### WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

#### HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or [www.sfbabar.org/adr](http://www.sfbabar.org/adr) for more information.

**For more information about ADR programs or dispute resolution alternatives, contact:**

Superior Court Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
415-551-3869

*Or, visit the court ADR website at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)*

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below:

## 1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

**(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP):** ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

**Operation:** Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: [www.sfbar.org/esp](http://www.sfbar.org/esp).

**Cost:** BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email [adr@sfbar.org](mailto:adr@sfbar.org) or see enclosed brochure.

**(B) MANDATORY SETTLEMENT CONFERENCES:** Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

## 2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

**(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO,** in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

**Operation:** Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at [www.sfbar.org/mediation](http://www.sfbar.org/mediation) or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management. Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

**Cost:** BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email [adr@sfbay.org](mailto:adr@sfbay.org) or see the enclosed brochure.

**(B) JUDICIAL MEDIATION** provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at anytime throughout the litigation process.

**Operation:** Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge for the Judicial Mediation program.

**(C) PRIVATE MEDIATION:** Although not currently a part of the court's ADR program, parties may elect any private mediator of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

### 3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

**(A) JUDICIAL ARBITRATION:** When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

**Operation:** Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. There is no cost to the parties for judicial arbitration.

**(B) PRIVATE ARBITRATION:** Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF.



## Superior Court of California County of San Francisco



HON. TERI L. JACKSON  
PRESIDING JUDGE

### Judicial Mediation Program

ELIZABETH M. KELBER  
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Suzanne R. Bolanos  
The Honorable Angela Bradstreet  
The Honorable Andrew Y.S. Cheng  
The Honorable Curtis E.A. Karnow  
The Honorable Charlene P. Kiesselbach

The Honorable Anne-Christine Massullo  
The Honorable James Robertson, II  
The Honorable John K. Stewart  
The Honorable Richard B. Ulmer, Jr.  
The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed due to the judge's availability, every effort will be made to fulfill the parties' choice for a particular judge. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution  
400 McAllister Street, Room 103-A, San Francisco, CA 94102  
(415) 551-3869

## EJT-001-INFO Expedited Jury Trial Information Sheet

This information sheet is for anyone involved in a civil lawsuit who will be taking part in an **expedited jury trial**—a trial that is shorter and has a smaller jury than a traditional jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.29 and in rules 3.1545–3.1553 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. The rules are at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).

### 1 What is an expedited jury trial?

An expedited jury trial is a short trial, generally lasting only one or two days. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- **The trial will be shorter.** Each side has 5 hours to pick a jury, put on all its witnesses, show the jury its evidence, and argue its case.
- **The jury will be smaller.** There will be 8 jurors instead of 12.
- **Choosing the jury will be faster.** The parties will exercise fewer challenges.

### 2 What cases have expedited jury trials?

- **Mandatory expedited jury trials.** All limited civil cases—cases where the demand for damages or the value of property at issue is \$25,000 or less—come within the *mandatory expedited jury trial* procedures. These can be found in the Code of Civil Procedure, starting at section 630.20. Unless your case is an unlawful detainer (eviction) action, or meets one of the exceptions set out in the statute, it will be within the expedited jury trial procedures. These exceptions are explained more in (7) below.
- **Voluntary expedited jury trials.** If your civil case is not a limited civil case, or even if it is, you can choose to take part in a *voluntary expedited jury trial*, if all the parties agree to do so. Voluntary expedited jury trials have the same shorter time frame and smaller jury that the

mandatory ones do, but have one other important aspect—**all parties must waive their rights to appeal**. In order to help keep down the costs of litigation, there are no appeals following a *voluntary* expedited jury trial except in very limited circumstances. These are explained more fully in (9).

### 3 Will the case be in front of a judge?

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney that the court appoints to act as a judge) will handle the trial.

### 4 Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

### 5 Is the decision of the jury binding on the parties?

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties in an expedited jury trial, like in other kinds of trials, are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as “high/low agreements.” You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

### 6 How else is an expedited jury trial different?

The goal of the expedited jury trial process is to have shorter and less expensive trials.

- The cases that come within the mandatory expedited jury trial procedures are all limited civil actions, and they must proceed under the limited discovery and





**EJT-001-INFO****Expedited Jury Trial Information Sheet**

pretrial rules that apply to those actions. See Code of Civil Procedure sections 90–100.

- The voluntary expedited jury trial rules set up some special procedures to help those cases have shorter and less expensive trials. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties in either kind of expedited jury trial can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need the jury to decide. The parties can agree to modify many of the rules that apply to trials generally or to any pretrial aspect of the expedited jury trials.

**7 Do I have to have an expedited jury trial if my case is for \$25,000 or less?**

Not always. There are some exceptions.

- The mandatory expedited jury trial procedures do not apply to any unlawful detainer or eviction case.
- Any party may ask to opt out of the procedures if the case meets any of the criteria set out in Code of Civil Procedure section 630.20(b), all of which are also described in item 2 of the *Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-003). Any request to opt out must be made on that form, and it must be made within a certain time period, as set out in Cal. Rules of Court, rule 3.1546(c). Any opposition must be filed within 15 days after the request has been served.

*The remainder of this information sheet applies only to voluntary expedited jury trials.*

**8 Who can take part in a voluntary expedited jury trial?**

The process can be used in any civil case that the parties agree may be tried in one or two days. To have a voluntary expedited jury trial, both sides must want one. Each side must agree to all the rules described in **1**, and to waive most appeal rights. The agreements between the parties must be put into writing in a

document called *[Proposed] Consent Order for Voluntary Expedited Jury Trial*, which will be submitted to the court for approval. (Form EJT-020 may be used for this.) The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

**9 Why do I give up most of my rights to an appeal in a voluntary expedited jury trial?**

To keep costs down and provide a faster end to the case, all parties who agree to take part in a voluntary expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

**10 Can I change my mind after agreeing to a voluntary expedited jury trial?**

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in a voluntary expedited jury trial, that agreement is binding on both sides. It can be changed only if **both** sides want to change it or stop the process or if a court decides there are good reasons the voluntary expedited jury trial should not be used in the case. This is why it is important to talk to your attorney **before** agreeing to a voluntary expedited jury trial. This information sheet does not cover everything you may need to know about voluntary expedited jury trials. It only gives you an overview of the process and how it may affect your rights. **You should discuss all the points covered here and any questions you have about expedited jury trials with an attorney before agreeing to a voluntary expedited jury trial.**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address)  TELEPHONE NO.:  ATTORNEY FOR (Name):  <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO</b> 400 McAllister Street San Francisco, CA 94102-4514  PLAINTIFF/PETITIONER:  DEFENDANT/RESPONDENT:	<b>FOR COURT USE ONLY</b>           CASE NUMBER:  DEPARTMENT 610
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>	

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- ☐ **Early Settlement Program of the Bar Association of San Francisco (BASF)** - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$295 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. [www.sfbars.org/esp](http://www.sfbars.org/esp)
- ☐ **Mediation Services of BASF** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. [www.sfbars.org/mediation](http://www.sfbars.org/mediation)
- ☐ **Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- ☐ **Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)
- ☐ **Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)

Judge Requested (see list of Judges currently participating in the program): \_\_\_\_\_

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

☐ 30-90 days ☐ 90-120 days ☐ Other (please specify) \_\_\_\_\_

☐ **Other ADR process (describe)** \_\_\_\_\_

2) The parties agree that the ADR Process shall be completed by (date): \_\_\_\_\_

3) Plaintiff(s) and Defendant(s) further agree as follows:

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

\_\_\_\_\_  
Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

☐ **Additional signature(s) attached**



**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

- Page 1 of 5

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☐ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

a. ☐ days (specify number):

b. ☐ hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference (specify code section):

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

CM-110

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form <b>are willing</b> to participate in the following ADR processes ( <i>check all that apply</i> ):	If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes, indicate the status of the processes ( <i>attach a copy of the parties' ADR stipulation</i> ):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

CM-110

PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____
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**11. Insurance**

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):  
b. ☐ Reservation of rights: ☐ Yes ☐ No  
c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

**12. Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

**13. Related cases, consolidation, and coordination**

- a. ☐ There are companion, underlying, or related cases.  
(1) Name of case:  
(2) Name of court:  
(3) Case number:  
(4) Status:  
☐ Additional cases are described in Attachment 13a.  
b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

**14. Bifurcation**

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

**15. Other motions**

- ☐ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

**16. Discovery**

- a. ☐ The party or parties have completed all discovery.  
b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

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PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**17. Economic litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

**18. Other issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

**19. Meet and confer**

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

_____	▶ _____
(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)
_____	▶ _____
(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address)	<b>FOR COURT USE ONLY</b>
TELEPHONE NO.:	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	DEPARTMENT 610

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- ☐ **Early Settlement Program of the Bar Association of San Francisco (BASF)** - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$295 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. [www.sfbars.org/esp](http://www.sfbars.org/esp)
- ☐ **Mediation Services of BASF** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. [www.sfbars.org/mediation](http://www.sfbars.org/mediation)
- ☐ **Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- ☐ **Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)
- ☐ **Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)

Judge Requested (see list of Judges currently participating in the program): \_\_\_\_\_

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

☐ 30-90 days ☐ 90-120 days ☐ Other (please specify) \_\_\_\_\_

☐ **Other ADR process (describe)** \_\_\_\_\_

2) The parties agree that the ADR Process shall be completed by (date): \_\_\_\_\_

3) Plaintiff(s) and Defendant(s) further agree as follows:

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

\_\_\_\_\_  
Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

☐ Additional signature(s) attached

TO (insert name of party being served): Walgreen Co.

## NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

**Date of mailing: December 11, 2018**

## Season Shimizu

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

### ACKNOWLEDGMENT OF RECEIPT

**This acknowledges receipt of (to be completed by sender before mailing):**

1. ☒ A copy of the summons and of the complaint.
2. ☒ Other (specify):

Civil Case Cover Sheet; Notice to Plaintiff; Alternative Dispute Resolution Program Information Package; Stipulation to Alternative Dispute Resolution (ADR)

**(To be completed by recipient):**

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)



**EXHIBIT B**

TO (insert name of party being served): Walgreen Co.

## NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

**Date of mailing: December 11, 2018**

## Season Shimizu

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER - MUST NOT BE A PARTY IN THIS CASE)

### ACKNOWLEDGMENT OF RECEIPT

**This acknowledges receipt of (to be completed by sender before mailing):**

1. ☒ A copy of the summons and of the complaint.

2. ☒ Other (specify):

Civil Case Cover Sheet; Notice to Plaintiff; Alternative Dispute Resolution Program Information Package; Stipulation to Alternative Dispute Resolution (ADR)

(To be completed by recipient): 12/1

Date this form is signed: 12/13/18

Allison C. ECUW700

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,  
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF  
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

EXHIBIT C

BRYAN CAVE LEIGHTON PAISNER LLP  
3161 MICHELSON DRIVE, SUITE 1500  
IRVINE, CA 92612-4414

**BRYAN CAVE LEIGHTON PAISNER LLP**

Allison Eckstrom, CA Bar No. 217255

E-Mail: allison.eckstrom@bclplaw.com

Christopher J. Archibald, CA Bar No. 253075

E-Mail: christopher.archibald@bclplaw.com

Michael E. Olsen, CA Bar No. 307358

E-Mail: michael.olsen@bclplaw.com

3161 Michelson Drive, Suite 1500

Irvine, CA 92612-4414

Telephone: (949) 223-7000

Facsimile: (949) 223-7100

Attorneys for Defendant  
WALGREEN CO.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN FRANCISCO – CIVIC CENTER COURTHOUSE**

ALFRED MORALES, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

WALGREEN CO., an Illinois corporation,  
and DOES 1-50, inclusive,

Defendants.

Case No.: CGC-18-570597

**DEFENDANT WALGREEN CO.'S  
ANSWER TO PLAINTIFF'S CLASS  
ACTION COMPLAINT**

Hon. Teri L. Jackson  
Department 610

Date Action Filed: October 16, 2018

1 Defendant WALGREEN CO. ("Walgreens") hereby responds to the allegations contained  
2 in the Complaint ("Complaint") filed by Plaintiff ALFRED MORALES ("Plaintiff") as follows:

3 **GENERAL DENIAL**

4 Pursuant to Code of Civil Procedure section 431.30(d), Walgreens denies generally and  
5 specifically each and every allegation contained in the Complaint. Walgreens further denies that  
6 Plaintiff has been injured or damaged in any manner or amount or is entitled to any relief of any  
7 kind. Without limiting the generality of the foregoing, Walgreens generally and specifically  
8 denies that Plaintiff, or any member of the putative class, has been damaged in any way or  
9 amount, by reason of any acts or omissions of Walgreens, or at all.

10 **SEPARATE DEFENSES**

11 Walgreens specifically reserves the right to amend its Answer to allege further affirmative  
12 defenses that it may have against Plaintiff and/or the putative class and/or subclasses. The Court  
13 has not yet certified a class, and the putative class members are not parties to the action.  
14 Walgreens further reserves the right to amend its Answer if additional defenses become apparent  
15 throughout the course of litigation.

16 Notwithstanding the foregoing, and without waiving its rights to assert additional  
17 defenses, Walgreens alleges the following affirmative defenses that it now knows to be applicable  
18 to Plaintiff and/or all or some of the putative class members. As for its separate and independent  
19 affirmative defenses in this action, and without conceding that it bears the burden of proof or  
20 persuasion as to any affirmative defense, Walgreens alleges as follows:

21 **First Affirmative Defense**

22 (Failure to State Facts Sufficient to Constitute a Cause of Action)

23 1. The Complaint, and the each cause of action alleged therein, fails to state facts  
24 sufficient to constitute a cause of action against Walgreens.

25 ///

26 ///

27 ///

28

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3161 MICHELSON DRIVE, SUITE 1500  
IRVINE, CA 92612-4414

**Second Affirmative Defense**

(Exempt from Overtime)

2. The Complaint, and each cause of action alleged therein, is barred because Plaintiff and putative class are exempt from overtime laws pursuant to the exemptions under applicable state laws. Accordingly, Plaintiff and the putative class are barred from any recovery on the causes of action asserted in the Complaint.

**Third Affirmative Defense**

(Statute of Limitations)

3. The Complaint, and each cause of action alleged therein, is barred, in whole or in part, by the applicable statutes of limitations, including, but not limited to, *Code of Civil Procedure* Sections 337, 338(a), 339, 340(a), 340(b), and *Business & Professions Code* Section 17208.

**Fourth Affirmative Defense**

(Standing)

4. The Complaint, and each cause of action alleged therein, is barred because Plaintiff lacks standing to bring one or more of the claims being asserted either on his own behalf or in his capacity as a putative class representative.

**Fifth Affirmative Defense**

(Substantial Compliance with Applicable Laws and Regulations)

5. Plaintiff's Complaint, and each cause of action alleged therein, is barred, in whole or in part, because Walgreens has substantially complied with any and all applicable statutes, regulations, and laws.

**Sixth Affirmative Defense***(De Minimis)*

6. Plaintiff's Complaint, and each cause of action alleged therein, is barred, in whole or in part, on the grounds that any liability for unpaid wages is *de minimis*.

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BRYAN CAVE LEIGHTON PAISNER LLP  
3161 NICHOLSON DRIVE, SUITE 1500  
IRVINE, CA 92612-4414

**Seventh Affirmative Defense**

(No Knowing and Intentional Failure)

7. Walgreens did not knowingly or intentionally fail to provide accurate, itemized statements to Plaintiff and the putative class within the meaning of *Labor Code* Section 226.

**Eighth Affirmative Defense**

(Paid All Wages Owed)

8. The Complaint, and each cause of action alleged therein, is barred, in whole or in part, because Plaintiff and the putative class received all wages, income, or salary to which they have ever been entitled.

**Ninth Affirmative Defense**

(Good-Faith Dispute)

9. The Complaint, and each cause of action alleged therein, is barred because Walgreens did not willfully fail to pay Plaintiff and the putative class wages, as a good faith dispute exists as to whether any wages are due.

**Tenth Affirmative Defense**

(Plaintiff Secreted or Absented)

10. The Complaint, and each cause of action alleged therein, is barred to the extent Plaintiff and the putative class have secreted or absented themselves in order to avoid payment of wages, or to the extent they refused to receive payment of wages when fully tendered.

**Eleventh Affirmative Defense**

(Not Entitled to Equitable Relief)

11. Plaintiff and putative class members are not entitled to the equitable relief requested in the Complaint, or to any injunctive or other form of equitable relief, because, among other things, Plaintiff and putative class members have an adequate remedy at law if they were to succeed in this action.

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**Twelfth Affirmative Defense**

(Avoidable Consequences Doctrine)

12. Plaintiff and the putative class members are not entitled to recovery on some or all of the purported causes of action because any purported loss could and should have been reduced or avoided by Plaintiff and the putative class by complying with company instructions and procedures.

**Thirteenth Affirmative Defense**

(Failure to Mitigate)

13. Plaintiff's and the putative class' recovery as to each purported cause of action alleged in the Complaint is barred, in whole or in part, by their failure to exercise reasonable care and diligence to mitigate any damages allegedly accruing to them.

**Fourteenth Affirmative Defense**

(Offset)

14. Walgreens denies that it has unlawfully failed to pay any amounts for wages to Plaintiff or putative class members, or that it otherwise acted improperly. However, any entitlement that Plaintiff or putative class members may have to additional wages is subject to an offset for payments or benefits that Plaintiff or putative class members may have received (or may receive) from Walgreens.

**Fifteenth Affirmative Defense**

(Privilege/Justification)

15. Walgreens' actions concerning the matters alleged in the Complaint, if any, were privileged and/or justified.

**Sixteenth Affirmative Defense**

(No Unjust Enrichment)

16. Walgreens alleges that Plaintiff and the putative class have not suffered any losses, and Walgreens has not been unjustly enriched as a result of any action by Walgreens. Plaintiff and the putative class, therefore, are not entitled to any disgorgement or restitution.

//

**Seventeenth Affirmative Defense**

(Representation Not Proper)

17. Plaintiff is not an adequate representative of the alleged putative class in this action.

**Eighteenth Affirmative Defense**

(No Community of Interest)

18. The putative class members do not share a community of interest in common questions of law and/or fact.

**Nineteenth Affirmative Defense**

(Failure to State a Class Action Claim)

19. The Complaint fails to allege facts sufficient to constitute a cognizable class action.

**Twentieth Affirmative Defense**

(Unconstitutional as Class and/or Representative Action)

20. The class allegations are barred on the ground that, if this action is certified as a class action, Walgreens' rights under the Fifth and Seventh Amendments to the United States Constitution would be violated.

**Twenty-first Affirmative Defense**

(Laches)

21. The Complaint is barred by the doctrine of laches.

**Twenty-second Affirmative Defense**

(Estoppel)

22. The Complaint is barred by the doctrine of estoppel.

**Twenty-third Affirmative Defense**

(Waiver)

23. The Complaint is barred by the doctrine of waiver.

**Twenty-fourth Affirmative Defense**

(Unclean Hands)

24. The Complaint is barred by the doctrine of unclean hands.

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IRVINE, CA 92612-4414

**Twenty-fifth Affirmative Defense**

(Failure to Exhaust Administrative Remedies)

25. Plaintiff has failed to exhaust remedies available under statutes, regulations, rules and procedures relating to the matters alleged in the Complaint, and is barred by reason of his failure to do so.

**Twenty-sixth Affirmative Defense**

(Accord and Satisfaction)

26. The Complaint is barred, in whole or in part, by the doctrine of accord and satisfaction.

**Twenty-seventh Affirmative Defense**

(Release)

27. The Complaint is barred, in whole or in part, by the doctrine of release.

**Twenty-eighth Affirmative Defense**

(No Violation of Underlying State or Federal Law)

28. Walgreens is not liable for unlawful business practices under California *Business and Professions Code* Section 17200 *et. seq.* because it is not liable to Plaintiff or the putative class for any alleged violation of any underlying state or federal laws.

**Twenty-ninth Affirmative Defense**

(No Unfair, Misleading, or Deceptive Business Practices)

29. Walgreens is not liable for violations of unfair business practices pursuant to California Business and Professions Code Section 17200 *et. seq.* because its business practices were not unfair, not deceptive, and not likely to mislead anyone.

**Thirtieth Affirmative Defense**

(Attorneys' Fees Not Recoverable)

30. Plaintiff is precluded from recovering attorneys' fees from Walgreens under applicable provisions of law.

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3161 MICHELSON DRIVE, SUITE 1500  
IRVINE, CA 92612-4414

**Thirty-first Affirmative Defense**

(Provided All Rest Breaks)

31. Any recovery of rest break premium payments is barred because Plaintiff and the putative class were authorized and permitted to take appropriate rest periods, but freely chose to forego or waive such rest periods; Walgreens did not impede, discourage or dissuade Plaintiff and/or other putative class members from taking appropriate rest periods.

**Thirty-Second Affirmative Defense**

(No Willful, Knowing, or Intentional Conduct)

32. Plaintiff and the putative class are not entitled to any penalties under the Labor Code because, at all relevant times, Walgreens did not willfully, intentionally, or knowingly fail to comply with the compensation provisions of the California *Labor Code*, but rather acted in good faith and had reasonable grounds for believing that it did not violate those provisions.

**Thirty-Third Affirmative Defense**

(No Waiting-Time Penalties)

33. The Complaint fails to state a claim for waiting-time penalties under California *Labor Code* Section 203 to the extent that Plaintiff and members of the putative class did not resign or were not discharged from their employment prior to the filing of this action.

**RESERVATION OF RIGHTS**

Walgreens reserves the right, upon completion of its investigation and discovery, to file such additional affirmative defenses as may be appropriate.

WHEREFORE, Walgreens hereby requests judgment as follows:

1. That Plaintiff takes nothing by the Complaint and that the same be dismissed with prejudice;
2. That judgment be entered in favor of Walgreens and against Plaintiff;
3. For reasonable attorneys' fees and costs incurred herein;

BRYAN CAVE LEIGHTON PAISNER LLP  
3161 MICHELSON DRIVE, SUITE 1500  
IRVINE, CA 92612-4414

1 4. For such other and further relief as this Court deems just and proper.

2  
3 Dated: January 4, 2019

BRYAN CAVE LEIGHTON PAISNER LLP  
Allison C. Eckstrom  
Christopher J. Archibald  
Michael E. Olsen

4  
5  
6  
7 By: 

Christopher J. Archibald  
Attorneys for Defendant Walgreen Co.

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BRYAN CAVE LEIGHTON PAISNER LLP  
3161 MICHELSON DRIVE, SUITE 1500  
IRVINE, CA 92612-4414

**PROOF OF SERVICE**

CCP 1013a(3)

*(Alfred Morales, et al. v. Walgreen Co.)*

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is: 3161 Michelson Drive, Suite 1500, Irvine, CA 92612-4414.

On **January 4, 2019**, I caused the following document(s) described as:

**DEFENDANT WALGREEN CO.'S ANSWER TO PLAINTIFF'S CLASS ACTION COMPLAINT**

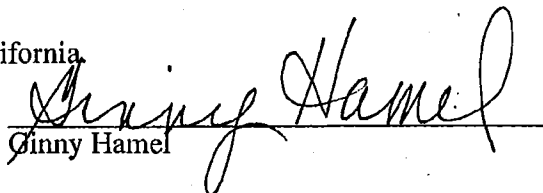
to be served on all interested parties in this action as follows:

Ray E. Gallo, Esq. Dominic Valerian, Esq. Nathaniel Simons, Esq. <b>GALLO LLP</b> 1604 Solano Ave., Suite B Berkeley, CA 94707	<i>Attorneys for Plaintiff</i>  Phone: 415.257.8800 Fax: 415.257.8844 E-mail: rgallo@gallo.law dvalerian@gallo.law nsimons@gallo.law
Edward J. Wynne, Esq. George R. Nemiroff, Esq. <b>WYNNE LAW FIRM</b> 80 E. Sir Francis Drake Blvd., Suite 3G Larkspur, CA 94939	<i>Attorneys for Plaintiff</i>  Phone: 415.461.6400 Fax: 415.461.3900 Email: ewynne@wynnelawfirm.com gnemiroff@wynnelawfirm.com

☒ BY NOTICE OF ELECTRONIC SERVICE THROUGH FIRST LEGAL: I caused said document(s) to be served by means of electronic transmission to the parties and/or counsel who are registered above and set forth in said service list.

☒ STATE - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 4, 2019**, at Irvine, California.

  
Ginny Hamel